



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 19, 2004

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-9882

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213182.

The Houston Police Department (the "department") received a request for thirty-four specific offense reports. You state that four of the requested reports will be released to the requestor, but you claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute, including section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(e)(1)-(3). Section 58.007(c) is applicable only to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75<sup>th</sup> Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Exhibit 2 involves conduct that occurred after September 1, 1997. However, the report contains conflicting and imprecise information regarding the ages of two of the suspects. If any suspect involved in this incident was indeed at least ten years old and less than seventeen years old when the incident occurred, Exhibit 2 is confidential under section 58.007 and, because no exception appears to apply, must be withheld pursuant to section 552.101 of the Government Code. However, if no suspect was within this age range at the time of the incident, the report may not be withheld under section 552.101 on the basis of section 58.007. Since our ruling under section 552.101 is conditional, we address your section 552.108 claim as it applies to this information.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You assert that the information in Exhibits 6-28 and 30-31 is excepted from disclosure under section 552.108(a)(1) of the Government Code. You inform us that Exhibit 8 pertains to an open and active case. You further explain that the offense reports labeled Exhibits 6-7, 9-28, and 30-31 relate to cases that are “inactive pending additional leads.” You state that “the statute of limitations has not run,” and that “the investigations may be reactivated once additional leads are developed.” Based upon these representations, we conclude that you have established that release of Exhibits 6-28 and 30-31 “would interfere with the detection, investigation, or prosecution of crime.” *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

You also assert that Exhibits 2-5 and 29 are excepted from disclosure based on section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that Exhibits 2-5 and 29 pertain to cases that did not result in a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibits 2-5 and 29.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 185; see also Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108 authorizes you to withhold the remaining information in Exhibits 2-31 from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.

You claim that Exhibit 9 contains basic information that is confidential under section 552.101 of the Government Code. You contend that the marked information in Exhibit 9 is "deemed confidential by judicial decision," and you cite to *N.W. Enterprises Inc., et al v. City of Houston*, 352 F.3d 162 (5<sup>th</sup> Cir. 2003). You state in this case that the Fifth Circuit upheld the district court's order holding that information on entertainer and manager applications is confidential under the Public Information Act.

We note that in *N.W. Enterprises*, the court discussed the confidentiality of "information provided by entertainers and managers on their permit applications." See *N.W. Enterprises* at 194. The information at issue in Exhibit 9 consists entirely of offense reports. Because the case you have cited specifically addresses permit applications, we find it is not applicable to the information you have submitted. Furthermore, you do not explain how the information at issue is part of or related to a permit application, nor do you otherwise explain how the case you cite is applicable to this information. Therefore, we find that you may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with this judicial decision.

In summary, we conclude that if any suspect listed in Exhibit 2 was at least ten years old and less than seventeen years old at the time of the reported incident, then Exhibit 2 must be withheld in its entirety under section 552.101 in conjunction with 58.007 of the Family Code. If no suspect in Exhibit 2 was within this age range, then, with the exception of basic

information, you may withhold this report as well as Exhibits 3-31 under section 552.108 of the Government Code.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

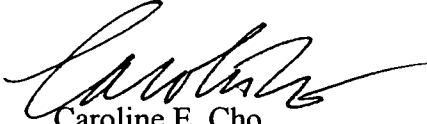
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure. .

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caroline E. Cho', with a stylized flourish at the end.

Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 213182

Enc. Submitted documents

c: Ms. Hope Edmondson  
Edmondson & Associates, LLP  
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(w/o enclosures)